IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

FRIDAY, THE 27TH APRIL 2007 / 7TH VAISAKHA 1929

WP(C).No. 14806 of 2005(K)

PETITIONER:

PRAVITHA M.G. U.P.S.A.
NAMBOODIRI VIDYALAYAM, U.P.SCHOOL,
THRISSUR.

BY ADV. SMT.V.P.SEEMANDINI (SR.),
SMT.T.B.REMANI.

RESPONDENTS:
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1. **THE DISTRICT EDUCATIONAL OFFICER,**
   THRISSUR,.

2. **THE ASSISTANT EDUCATIONAL OFFICER,**
   THRISSUR WEST.

3. **THE MANAGER,**
   NAMBOODIRI VIDYALAYAM,
   U.P.SCHOOL, THRISSUR.

4. **V.K.RADHA,**
   L.P.S.A.
   N.V.U.P.SCHOOL,
   THRISSUR.

BY ADV. SRI.N.P.SAMUEL,
SRI.B.K.PURUSHOTHAMAN,
SR. GOVERNMENT PLEADER SMT. M.R. SREELATHA.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 19/01/2007,THE COURT ON 27/04/2007 DELIVERED THE FOLLOWING:

W.P.(C). NO.14806/2005:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE CERTIFICATE DTD. 25/09/2003 ISSUED BY THE P.S.C.

EXT.P.2: COPY OF THE RELEVANT PAGES OF SENIORITY LIST OF THE 3RD RESPONDENT'S SCHOOL AS ON 01/06/04.

EXT.P.3: COPY OF THE ORDER DTD. 10/02/2005 ISSUED BY THE R.2.

EXT.P.4: COPY OF THE ORDER DTD. 05/05/2005 ISSUED BY THE R.2.

EXT.P.5: COPY OF THE ORDER DTD. 07/05/2005 ISSUED BY THE R.3.

EXT.P.6: COPY OF THE ARGUMENT NOTE DTD. 02/05/2005 SUBMITTED BY THE PETITIONER BEFORE THE R.1.

RESPONDENT'S EXHIBITS:

EXT.R3.A: COPY OF THE ORDER NO. 18/04-05/04 DTD. 31/07/2004 ISSUED BY THIS RESPONDENT TO R.4.

EXT.R3.B: COPY OF THE JUDGMENT IN W.P.(C). NO. 326/2005-L DTD. 16/03/05 OF THIS HON'BLE COURT.

EXT.R3.C: COPY OF THE ARGUMENT NOTES SUBMITTED BY THIS RESPONDENT BEFORE THE D.E.O. THRISSUR DTD. 18/04/2005.

EXT.R3.D: COPY OF THE APPOINTMENT ORDER OF P.K. NAVEEN DTD. 02/08/2004 ISSUED BY THE MANAGER, N.V.U.P. SCHOOL.

EXT.R3.E: COPY OF THE LETTER NO. 19/2004 DTD. 02/08/2004 SENT BY PETITIONER - MANAGER TO A.E.O. , THRISSUR .

EXT.R3.D: COPY OF THE LETTER NO. 19/04 DTD. 02/08/2004 ISSUED BY THE PETITIONR TO R3. AEO.

//TRUE COPY//

prv.

K.M.JOSEPH, J.

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WP.(C) No. 14806 OF 2005

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Dated this the 27th day of April, 2007

JUDGMENT

Case of the petitioner is as follows:

Petitioner was initially appointed as LPSA in the third respondent School on 11.6.1996 and is having continuous service from 15.7.1996. She is qualified to be promoted as HM of a U.P. School. A vacancy arose of Headmaster on 1.8.2004. Petitioner has passed the Account Test Lower as mandated under Rule 45B of Chapter XIVA KER as evident from Ext.P1. The fourth respondent is possessed of B.Sc., and B.Ed., and she is also having continuous service as LPSA in the School with effect from 15.7.1996. But she is not possessing the mandatory qualification of Account Test Lower. Ext.P2 is a seniority list, in which fourth respondent and petitioner were shown as 3 and 4. The fourth respondent was however posted as teacher-in-charge with effect from 1.8.2004. Petitioner approached this court. Pursuant to the interim direction the petitioner was appointed as Headmistress-in-charge of the school from 15.2.2005 and even now she is continuing. During pendency of the writ petition the appointment of the fourth

respondent as teacher in charge was rejected vide Ext.P3. The writ petition was disposed of permitting challenge to Ext.P3 by the third respondent Manager. Vide Ext.P4 the DEO allowed the appeal and upheld the appointment of the fourth respondent as Headmaster with effect from 1.8.2004 and directed the second respondent to approve her appointment. By Ext.P5 petitioner was asked to hand over charge. Petitioner challenges Exts.P4 and P5.

2. Counter affidavits are filed. In the counter affidavit filed by the Manager, he has produced Ext.R3(b), which is a judgment delivered in the earlier writ petition filed by the petitioner. Ext.R3(c) is the argument note preferred by the petitioner in the appeal before the DEO.

3. Even though there is no serious dispute that the fourth respondent is senior to the petitioner, the contention raised by the petitioner however is that the fourth respondent is a graduate , without having passed Account Test (Lower) while petitioner has T.T.C., B.A. B.Ed., and Account Test (Lower).

4. In Ext.P4 it is found that the fourth respondent has first

appointment on 6.9.1993 while the petitioner has first appointment on 11.6.1996 and continuous service with effect from 15.7.1996. In fact in Ext.P2 seniority list the fourth respondent is shown as Sl.No.3 and the petitioner is shown as Sl.4. The fourth respondent has also got five years of service after acquiring B.Ed. She has half the service of the under graduate teacher. When the vacancies arose on 31.7.2004 afternoon the fourth respondent was found to be not fully qualified as on that day she did not possess Account Test Lower as provided under Rule 45B. The petitioner had not acquired five years of service after B.Ed. She acquired B.Ed only in 2002 and she became fully qualified only in 2007. Thereafter after referring to Rule 45C(6) it is found that it is the senior-most teacher who is to be appointed as teacher in charge, if there are no teachers with prescribed service qualifications available. On the said basis the DEO found that the action of the Manager in placing the fourth respondent as teacher in charge in the vacancy arisen is in order.

5. According to the learned counsel for the petitioner, petitioner was the only qualified teacher as on the date of occurrence of the

vacancy. She would contend that the impact of Rules 44 and 45B(6) of Chapter XIVA has been misinterpreted. It is her case that under Rules 45B and 45C of Chapter XIVA the fourth respondent will have a preferential claim only in the absence of test qualified graduate or under graduate teacher. It is stated that the benefit conferred on the graduate teacher in the matter of preference in appointment will not be available to a graduate teacher who is not Account Test qualified as on the date of occurrence of the vacancy.

6. Rule 44 of Chapter XIVA KER provides that the appointment of Headmaster shall ordinarily be according to seniority. Rule 45 deals with appointment to the post of Headmaster of a complete UP School. It declares that a graduate teacher will have preference for appointment to the post of Headmaster. The graduate teacher must have B.Ed or other equivalent qualification and he must have atleast five years experience in teaching after acquisition of B.Ed. Degree. Further he must have service equal to half of the period of service of the senior-most under graduate teacher. It is in the absence of such graduate teachers possessing the qualifications and experience mentioned above

that the senior-most primary school teacher with SSLC or equivalent qualification and T.T.C., etc., mentioned in the Rule can be appointed. Rule 45B was inserted on 19.12.1978. Sub Rule (1) is a non-obstante clause. It provides that notwithstanding anything contained in Rules 45 and 45A the possession of Account Test Lower conducted by the PSC shall be a mandatory qualification for promotion as Headmaster in the Primary Schools. Rule 45C Sub Rule (1) declares that where in an aided School a qualified teacher is not available to be promoted as Headmaster in accordance with the provisions contained in Rules 44, 44A, 45, 45A and 45B the senior-most teacher on the staff of the school or the schools under the educational agency is to be temporarily promoted as Headmaster. It is provided that in the case of Primary Schools it shall be the senior-most teacher possessing qualifications prescribed in Rule 45 or as the case may be, Rule 45A. Sub Rule (2) provides that a teacher temporarily promoted under sub-rule (1) shall be replaced as soon as possible by the member of the service, who becomes qualified for promotion. Sub Rule (6) reads as follows:

> "If no teacher with the prescribed service

> qualification is available on the staff of the school or the schools under the Educational Agency for temporary promotion as Headmaster under sub-rule (1) and the proviso thereunder, the seniormost teacher on the staff of the school or the schools under the Educational Agency shall be appointed as Teacher-in-charge, provided that in the case of a High School, the teacher-in-charge should be the Senior most Graduate teacher on the staff of the school or the Unit, and he shall be replaced as soon as a fully qualified teacher as provided in the rules becomes available."

Sub Rule (7) declares that a teacher-in-charge appointed under Sub Rule (6) is eligible for grade pay plus charge allowance.

7. The question for consideration would be whether in passing Ext.P4 order the DEO was justified in holding that conditions mentioned in Rule 45C(6) existed. According to learned counsel for the petitioner, the fourth respondent being found not fully qualified in Ext.P4as she did not pass Account Test Lower as mandated in Rule 45B, it is the petitioner, who should be treated as qualified. Apart from being a graduate she is also possessed of qualification of T.T.C.. In other words, it is her contention that even treating the fourth

respondent as her senior, the petitioner was fully qualified as she was in possession of T.T.C., and had passed Account Test Lower and was therefore eligible to be appointed under Rule 45 and the fact that she had not completed five years of teaching experience after acquisition of B.Ed would be relevant only when her claim is considered treating her as a graduate. She would point out that the fourth respondent is admittedly not qualified, treating her as a graduate when there is an undergraduate teacher, namely, the petitioner herein, and there is no basis at all to not promote the petitioner as Headmistress. Treating it as a case where the fourth respondent though possessed of all the qualifications mentioned in Rule 45 is not qualified when Rule 45 is read along with Rule 45B it is pointed out that the fourth respondent was clearly and admittedly not qualified.

8. Per contra learned counsel for the fourth respondent would contend that it is not open to the petitioner to raise a claim on the strength of her being an under graduate teacher. In this contention he would invite my attention to Ext.R2(b) judgment. In Ext.R2(b) judgment obtained by the petitioner her definite case was that she is the

most eligible and suitable candidate to be appointed as Headmaster as according to her she has got graduation with B.Ed., and she has passed Account Test too. It is submitted by the respondents that it is not open to the petitioner to raise a contention based on her claim as an under graduate teacher. She brought my attention to Ext.P2 seniority list. It is pointed out that in the case of the petitioner the qualifications noted are B.A., B.Ed., and Account Test Lower. There is no reference to her claim based on T.T.C., he submits. It is pointed out that it should not be open to the petitioner to raise a claim based on her being an under graduate teacher.

9. Learned Government Pleader Smt. M.R.Sreelatha would submit that the contention of the petitioner may not be tenable on a perusal of Rule 45 itself. It is pointed out that the right given to an under graduate teacher is available only if there is no graduate teacher with B.Ed and with five years experience after acquiring B.Ed and with half the service of the senior-most under graduate teacher. She would contend that it may not therefore be open to the petitioner to urge the requirement of Rule 45B also as a condition for claiming a right as an

under graduate teacher over a graduate teacher. In other words, her contention is that an under graduate teacher cannot make use of the fact that the fourth respondent does not possess Account Test Lower to defeat the right the fourth respondent as a graduate. There is no doubt, it is pointed out, that the fourth respondent satisfies all the ingredients in Rule 45itself to raise the preferential claim under Rule 45 for the post of Headmistress. The answer no doubt of the petitioner is that Rule 45 must be read in conjunction with Rule 45B. Rule 45B is a non-obstante clause and a graduate teacher will not be entitled to promotion without the graduate teacher passing the account test mentioned in Rule 45B, she submits. There is a contention raised by the petitioner that her case based on her possession T.T.C and being otherwise fully qualified has not been considered by the DEO. But I find on a perusal of Ext.P4 that in fact the first respondent has adverted to the same and dealt with it in the following manner:

> "The argument of Smt. M.G.Pravitha is that she is having T.T.C and Account Test Lower cannot be applied ; as preference shall pass on to those who have B.Ed with five years teaching experience (Rule 45)"

10. Learned counsel for the petitioner relies on the judgment of the Full Bench of this court reported in **S.N.D.P.L.P.School v. Roy** (2006(4) K.L.T. 497). Therein it is inter alia held that the teacher qualified for appointment as UPSA is also eligible for promotion as Headmistress. It was also held that in the absence of a graduate teacher with requisite training and service qualification the senior-most LPSA can stake a claim for the post of Headmistress of the UP School. It was held that both LPSAs as well as UPSAs came within the purview of qualified teachers.

11. The fourth respondent is held to be senior to the petitioner as the fourth respondent and the petitioner having commenced continuous service on the same day going by the earlier date of first appointment in favour of the fourth respondent it is the fourth respondent who must be ranked as senior to the petitioner. On a perusal of Ext.R2(b) it is clear that the definite case set up by the petitioner was based on her being a graduate teacher with B.Ed. Undoubtedly this court had directed the first respondent to decide the matter in accordance with law. It would appear that petitioner has raised a claim both as a graduate teacher and

as an under graduate teacher. As far as her claim based on her being a graduate teacher, the impugned order is only to be upheld. By the impugned order it is found that neither the petitioner nor the fourth respondent is fully qualified as on the date of occurrence of the vacancy. The fourth respondent was not qualified because she did not possess the Account Test Lower. Petitioner was not fully qualified treating her as a graduate teacher for the admitted reason that she did not have five years experience as teacher after acquiring B.Ed. Therefore Ext.P4 is only to be upheld if the claim of the petitioner is to be rested under the category graduate teacher. This is for the reason that both the petitioner and the fourth respondent being not fully qualified, invocation of Rule 45C and appointment of the fourth respondent being the senior-most teacher is only to be supported.

12. The ultimate question however which remains is whether the petitioner is right in contending that she is entitled to be promoted as Headmistress treating her as an under graduate teacher. Undoubtedly petitioner has T.T.C., besides being a graduate. In that sense it could be said that she is eligible to be treated as an under graduate teacher.

Two questions arises. Firstly whether it is open to the petitioner to claim the benefit of being a graduate teacher and claim appointment on the said basis and in the same breath finding herself to be disentitled in the said category to fall back on a claim treating her as an under graduate teacher. The second question which is to be answered is even considering her claim as an under graduate teacher whether in the light of the provisions of Rule 45 and Rule 45B it could be said that the invocation of Rule 45C was untenable.

13. Going by the provisions of Rule 45 the undergraduate teacher will get right to be considered for appointment only in the absence of a graduate teacher who has the qualifications which are mentioned in the said rule. In other words, it is clear that an undergraduate teacher can raise a claim for appointment only in the absence of a graduate teacher fulfilling the other requirements as specifically indicated in Rule 45 itself. If that be so, undoubtedly the claim of the petitioner as an undergraduate teacher, can only be rejected. This is for the reason that there is a graduate teacher, who is senior to the petitioner and who is qualified in terms of Rule 45 to be

appointed. The rule making authority has not proceeded to amend Rule 45 providing for a right with the undergraduate teacher if the graduate teacher possesses all the qualifications mentioned in Rule 45, but does not possesses the qualifications mentioned in Rule 45B. In such circumstances, it is clear that the petitioner cannot lay a claim as an undergraduate teacher as her claim will be in the teeth of the provisions of Rule 45 in view of the facts as already mentioned. Thus even considering her claim as an undergraduate teacher, the petitioner has no case on merits.

Consequently the writ petition fails and it is dismissed.

(K.M. JOSEPH, JUDGE)

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K.M.JOSEPH, JJ.

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W.A. No. OF

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JUDGMENT

Dated this the day of February, 2006.